IN THE HIGH COURT OF JUDICATURE AT PATNA
C.R. No.307 of 2007
MAHANT RAM SUNDER DAS, CHELA
Versus
KEDAR KAPARH & ORS
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6 22.08.2008 Heard counsel for the parties.

The impugned order has been assailed by the counsel appearing on behalf of the defendant, petitioner only on the ground that the Court below, the Court of Sub-Judge had no jurisdiction to entertain the suit and the impugned order taking a view that such a suit was maintainable in the Court of Sub-Judge, is vitiated by jurisdictional error.

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In order to appreciate the said submission as advanced by the counsel for the petitioner the only thing to be noticed is that the plaintiffs, opposite parties had filed a suit, Title Suit No. 94 of 2005 in the Court of Sub-Judge-1, Sitamarhi for the following reliefs :-

I. On consideration of the facts it be declared that the properties mentioned in Schedule-I is Public Trust Properties and the defendant(petitioner) has no interest therein.

II. It be further declared that the conduct of the defendant (petitioner) is contrary to the Trust and he be removed from the office of the trustee.

III. A decree for cost be passed.

IV. Any other reliefs to which the plaintiffs are entitled to be passed.

Mr. Yogendra Mishra, learned senior counsel was quite emphatic in his submission that such a suit seeing aforementioned relief in terms of Section 48 read with Section 77 of Bihar Hindu Religious Trust Act, 1950, hereinafter referred to as 'the Act" was maintainable only before the District Judge.

In the opinion of this court, such an objection to jurisdiction of a Civil Court of competent jurisdiction, as pressed by the learned counsel for the petitioner seems to be misconceived. Section 48 of the Act reads as follows :-

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"48. Power of District Judge to remove trustee or appoint trustee – (1) The Board, or with the previous sanction of the Board, any person interested in a religious trust may make an application to the District Judge for an order : -

(a) removing the trustee of such religious trust, if such trustee - .

(i) acts in a manner prejudicial to the interest of the said trust, or

(ii) defaults on three or more occasions in the payment of any amount payable under any law for the time being in force in respect of the

property or income of the said trust or any other statutory charge on such property or income, or

(iii) defaults on three or more occasions in the payment of any sum payable to any beneficiary under the said trust or in discharging any other duty imposed upon him under it, or

(iv) is guilty of a breach of trust.

(b) appointing a new trustee;

(c) vesting any property in a trustee;

(d) directing accounts and inquires; or

(e) granting such further or other relief as the nature of the case may require.

(2) The order of the District Judge under sub-section (1) shall be final."

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A close analysis of the aforementioned provisions of Section 48 of the Act would itself make it clear that the same does not has the jurisdiction of Civil Court of competent jurisdiction in terms of Section 9 of the Code of Civil Procedure, Section 48 of the Act infact creates a special jurisdiction in a nominated court i.e. Court of District Judge in only certain specied contingencies and for specified purposes under the Act. A Court of District Judge has to be approached only if the matter in issue involves the question

of removal or appointment of Trustee of a religious trust as defined under Section 2(i) of the Act. However when an issue for determination in a suit, as to whether a trust is or is not a "religious trust" as defined in Section 2(1) of the Act and seeks consequential relief of an appointment of a trustee of such a trust, there would be no question of ipso-facto applicability of Section 48 of the Act.

The counsel for the petitioner has presumed that the suit has been filed in respect of a "religious trust", as defined under Section 2(l) of the Act. Such impression of counsel for the petitioner is apparently misconceived inasmuch as what has been really sought by way of declaration in the suit in hand is that certain properties should be declared as a public trust property as the same is not a private property of the defendant, petitioner. Infact it would be too far fetched conclusion to say that the moment such a declaration is sought from the court in respect of any property regarding its being public trust property, there would be an automatic presumption of its being an issue involving "religious trust" in terms of Section 2(l) of the Act. Normally the scheme of a trust has to be guided and governed by the provisions of Trust Act 1882. It is only when such a trust can be shown to be fulfilling test "religious trust" under the Act, and further involves the exclusive issue of appointment or removal of "trustee" as defined under Section 2(n) of the Act, that the

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Court of District Judge exclusion to all other Courts gets the jurisdiction to decide the matters specified under Section 48 of the Act.

Such submission of the learned counsel has to be therefore examined with reference to the scope and meaning of "religious trust" under the Act.

Section 2(l) of the Act defines religious trust as follows:-

> *"religious trust" means any express or constructive trust created or existing for any purpose recognized by Hindu Law to be religious, pious or charitable, but shall not include a trust created according to the Sikh religion or purely for the benefit of the Sikh community and a private endowment created for the worship of a family idol in which the public are not interested".*

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The aforementioned definition, therefore, would clearly goes to show that while the Act applied only to religious public trust or not to private religious trust in which the public are not interested. The religious trust property there would mean public religious trust property as held in the case of Mahant Moti Das Vs. S.P. Sahi reported in AIR 1959 SC 1951 and by this Court in the case of Mundrika Kuer Vs. President, Bihar State Board of Religious

Trust and Ors. 1968 BLJR 197.

Thus on a plain construction of the scheme under the Act, read with the aforementioned relief in the plaint of the suit in hand it would be clear that right now the issue actually raised is as to whether the suit property belongs to public religious trust or to a private trust. Strictly speaking such suit was/is maintainable before the Sub-Judge because the District Judge gets power only when it is an admitted fact that the suit is with regard to a public religious trust.

The aforesaid view that I have taken is also clearly reflected from the provisions of Section 77 of the Act which reads as follows :-

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> *"77. Bar of suits.- Save as otherwise provided in this Act, no suit shall be brought in any Civil Court to set aside or modify any order made under this Act, and no suit shall lie against the Board, the President or any other member or the Superintendent for anything in good faith done or purporting to be done under this Act."*

A plain reading of the aforesaid provision relating to bar of suit would therefore make it clear that the jurisdiction of Civil Court has not been altogether excluded and a suit for an action brought or right to be enforced beyond the

scope of the Act definitely maintainable in terms of Section 9 C.P.C. read with Section 77 of the Act. The only restriction imposed under Section 77 of the Act is in respect of a suit wherein an order made under the Act or any action taken by the President or Member or Superintendent of the Board for anything done in good faith or purported to be done under the Act is made subject matter of the suit as was also held by this Court in the case of Bihar State Board Religious Trust Vs. Raj Ratan Giri & Ors. reported in 1969 BLJR 63.

It is well settled that the provision of a bar of jurisdiction of Civil court, has to be construed in a strict manner. If therefore the interpretation of Section 48 as put forward by learned counsel for the petitioner is taken to its legal conclusion, this Court will have to read the expression "District Judge" instead of "Civil Court" for giving effective meaning to the provisions of Section 77 of the Act. That however is not permissible because the Court cannot substitute the legislative intendment in order to make a provision redundant by interchanging the expression.

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Thus a conjoint reading of Section 77 read with Section 48, would go to show that normally a dispute as to whether a suit property is a public religious trust property or a private trust would always be maintainable before the competent Civil Court but if the dispute is in respect of appointment/removal of a trustee an admitted public

religious trust, such dispute as specified under Section 48 of the Act would be gone into by the Court of the District Judge alone. Section 48 of the Act in fact in my opinion carves out an exception from the wide ambit of Section 77 of the Act where an order of the Board in respect of a public trust cannot be assailed before a Civil Court but then such order of the Board as with regard to appointment/removal of the trustee of a "religious trust" or vesting any property in a trustee or directing accounts or enquiries in respect of a public religious trust within the ambit of Section 48 of the Act at the instance of any person interested in the public religious trust can be examined and gone into by the District Judge of the District Court being the principal Civil Court.

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Thus this Court is of the view that in view of the limited relief that has been sought in the suit by the plaintiffs, opposite parties such a suit is maintainable before the Civil Court and had been correctly filed before and rightly entertained by the concerned court of Sub-Judge. This being so, there is no flaw much less any jurisdictional error in the impugned order.

This, however, will not end of the matter in this case inasmuch as from various paragraphs of the plaint and written statement, it would appear that certain action with regard to suit property taken by the Board has also been referred to in the pleadings. It also transpires from those

pleadings that the Board had intervened as with regard to certain property of the trust by giving permission to sale the land of the trust vide its letter No. 13248 dated 24.2.1981 as would appear from the written statement of the Board on record. The Board in fact having treated the will of Late Mahant Ram Swaroop Das, delegating the property of the trust to the general public has also treated the trust in question as public religious trust. In that view of the matter certain issues raised in the suit seeking removal of the defendant-petitioner from the office of trustee would be required to be gone into once it is held that the suit property is public religious trust properties and thus part of such relief would be friable exclusively by the Court of District Judge. It was in this context that the counsel for plaintiff-opposite party who has appeared on notice by this Court in the present case has submitted that he will have no objection if the suit is transferred from the court of Sub-Judge to the court of District Judge under an order of this court as is also being prayed by the defendant- petitioner.

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In view of a very fair stand taken by the counsel for the plaintiff-opposite party agreeing to the prayer of the petitioner for the suit being taken up and disposed of by the District Judge in place of Sub-Judge, this Court would direct for transfer of the suit No. 94 of 2005 from the Court of Sub-Judge-I, Sitamarhi to the Court of District Judge,

Sitamarhi. In view of the fact that a period of 3 years has already been consumed only on the question of jurisdiction, this court would direct the District Judge, Sitamarhi to take up the hearing of the Suit expeditiously inasmuch as both the parties have informed this Court that the pleadings in all respect have been completed and in fact the issues have already been framed. In that view of the matter, the District Judge, Sitamarhi is directed to ensure that the suit is disposed of on merits within a period of six months from the date of receipt/production of a copy of this order.

With the aforementioned observations and directions this application is disposed of.

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Bibhash (Mihir Kumar Jha, J.)